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9 **BEFORE THE**
BOARD OF REGISTERED NURSING
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. **2012-66**

13 **MA AILAINÉ FRANCISCO OMILLO**
14 **470 N. White Road**
San Jose, CA 95127

A C C U S A T I O N

15 **Registered Nurse License No. 693270**

16 Respondent.

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18
19 Complainant alleges:

20 **PARTIES**

21 1. Louise R. Bailey, M.Ed., RN (Complainant) brings this Accusation solely in her
22 official capacity as the Executive Officer of the Board of Registered Nursing, Department of
23 Consumer Affairs.

24 2. On or about November 30, 2006, the Board of Registered Nursing issued Registered
25 Nurse License Number 693270 to Ma Ailaine Francisco Omillo (Respondent). The Registered
26 Nurse License was in full force and effect at all times relevant to the charges brought herein and
27 will expire on April 30, 2012, unless renewed.

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JURISDICTION

3. This Accusation is brought before the Board of Registered Nursing (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code (Code) unless otherwise indicated.

4. Section 2750 of the Business and Professions Code (Code) provides, in pertinent part, that the Board may discipline any licensee, including a licensee holding a temporary or an inactive license, for any reason provided in Article 3 (commencing with section 2750) of the Nursing Practice Act.

5. Section 2764 of the Code provides, in pertinent part, that the expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the licensee or to render a decision imposing discipline on the license. Under section 2811(b) of the Code, the Board may renew an expired license at any time within eight years after the expiration.

STATUTORY PROVISIONS

6. Section 482 of the Code states:

Each board under the provisions of this code shall develop criteria to evaluate the rehabilitation of a person when:

(a) Considering the denial of a license by the board under Section 480; or

(b) Considering suspension or revocation of a license under Section 490.

Each board shall take into account all competent evidence of rehabilitation furnished by the applicant or licensee.

7. Section 490 of the Code provides, in pertinent part, that a board may suspend or revoke a license on the ground that the licensee has been convicted of a crime substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued.

8. Section 493 of the Code states:

Notwithstanding any other provision of law, in a proceeding conducted by a board within the department pursuant to law to deny an application for a license or to suspend or revoke a license or otherwise take disciplinary action against a person who holds a license, upon the ground that the applicant or the licensee has been convicted of a crime substantially related to the qualifications, functions, and duties of the licensee in question, the record of conviction of the crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact, and the board

1 may inquire into the circumstances surrounding the commission of the crime in order
2 to fix the degree of discipline or to determine if the conviction is substantially related
to the qualifications, functions, and duties of the licensee in question.

3 As used in this section, "license" includes "certificate," "permit," "authority,"
4 and "registration."

5 9. Section 810 of the Code states:

6 (a) It shall constitute unprofessional conduct and grounds for disciplinary
7 action, including suspension or revocation of a license or certificate, for a health care
8 professional to do any of the following in connection with his or her professional
activities:

9 (1) Knowingly present or cause to be presented any false or fraudulent claim
for the payment of a loss under a contract of insurance.

10 (2) Knowingly prepare, make, or subscribe any writing, with intent to present
11 or use the same, or to allow it to be presented or used in support of any false or
fraudulent claim.

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13 10. Section 2761 of the Code states:

14 The board may take disciplinary action against a certified or licensed nurse or
15 deny an application for a certificate or license for any of the following:

16 (a) Unprofessional conduct, which includes, but is not limited to, the
following:

17

18 (f) Conviction of a felony or of any offense substantially related to the
19 qualifications, functions, and duties of a registered nurse, in which event the record of
the conviction shall be conclusive evidence thereof.

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21 11. Section 2765 of the Code states:

22 A plea or verdict of guilty or a conviction following a plea of nolo contendere
23 made to a charge substantially related to the qualifications, functions and duties of a
24 registered nurse is deemed to be a conviction within the meaning of this article. The
board may order the license or certificate suspended or revoked, or may decline to
25 issue a license or certificate, when the time for appeal has elapsed, or the judgment of
conviction has been affirmed on appeal or when an order granting probation is made
26 suspending the imposition of sentence, irrespective of a subsequent order under the
provisions of Section 1203.4 of the Penal Code allowing such person to withdraw his
27 or her plea of guilty and to enter a plea of not guilty, or setting aside the verdict of
guilty, or dismissing the accusation, information or indictment.

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REGULATORY PROVISIONS

12. California Code of Regulations, title 16, section 1444, states:

A conviction or act shall be considered to be substantially related to the qualifications, functions or duties of a registered nurse if to a substantial degree it evidences the present or potential unfitness of a registered nurse to practice in a manner consistent with the public health, safety, or welfare. Such convictions or acts shall include but not be limited to the following:

(a) Assaultive or abusive conduct including, but not limited to, those violations listed in subdivision (d) of Penal Code Section 11160.

(b) Failure to comply with any mandatory reporting requirements.

(c) Theft, dishonesty, fraud, or deceit.

(d) Any conviction or act subject to an order of registration pursuant to Section 290 of the Penal Code.

13. California Code of Regulations, title 16, section 1445 states:

....

(b) When considering the suspension or revocation of a license on the grounds that a registered nurse has been convicted of a crime, the board, in evaluating the rehabilitation of such person and his/her eligibility for a license will consider the following criteria:

(1) Nature and severity of the act(s) or offense(s).

(2) Total criminal record.

(3) The time that has elapsed since commission of the act(s) or offense(s).

(4) Whether the licensee has complied with any terms of parole, probation, restitution or any other sanctions lawfully imposed against the licensee.

(5) If applicable, evidence of expungement proceedings pursuant to Section 1203.4 of the Penal Code.

(6) Evidence, if any, of rehabilitation submitted by the licensee.

COSTS

14. Section 125.3 of the Code provides, in pertinent part, that the Board may request the administrative law judge to direct a licensee found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

1 **FIRST CAUSE FOR DISCIPLINE**

2 **(November 8, 2010 Federal Criminal Conviction for Health Care Fraud)**

3 15. Respondent has subjected her license to disciplinary action under sections 490 and
4 2761, subdivision (f) of the Code in that Respondent was convicted of a crime that is substantially
5 related to the qualifications, functions, and duties of a registered nurse. The circumstances are as
6 follows.

7 a. On or about November 8, 2010, in a criminal proceeding entitled *United States*
8 *of America vs. Ma Ailaine Francisco Omillo*, in U.S. District Court, Central District of California,
9 case number CR 09-00609-GAF-3, Respondent was convicted on her plea of guilty of violating
10 Title 18 United States Code section 1347. Respondent admitted that: (a) Respondent knowingly
11 and willfully executed or participated in a scheme to defraud or obtain money from a health care
12 benefit program by submitting false and fraudulent claims to that program; (b) Respondent knew
13 that the claims being submitted to the health care benefits program were false and fraudulent; (c)
14 the false and fraudulent claims were material, in that they would reasonably influence the health
15 care benefits program to pay money to which the provider was not legitimately entitled; (d)
16 Respondent acted with the intent to defraud; and (e) the false and fraudulent claims were made in
17 connection with the delivery of, or payment for, health care benefits, items or services.

18 b. As a result of the conviction, on or about November 8, 2010, Respondent was
19 sentenced to two years probation and ordered to pay restitution in the amount of \$13,909.80.

20 c. The facts that led to the conviction are that on or before March 2006,
21 Respondent was employed by Medicare Plus Home Health Providers, (hereinafter "Medcare
22 Plus"), a home health agency.¹ Respondent was not a licensed nurse in California at the time she
23 applied for employment with Medicare Plus, or at any time when she committed the acts described
24 herein. Excel Plus Home Health Services (Excel Plus) and/or Unicare Health Professional
25 (Unicare) were entities that Medicare Plus utilized to pay unlicensed individuals, such as
26 Respondent, who were providing private duty nursing services to sick patients, many of them

27 ¹ A home health agency (HHA) provides medical and non-medical care that is paid for
28 with public or private funds.

1 children, who were beneficiaries of Medi-Cal. Medi-Cal provides reimbursement for medically
2 necessary health care services to indigent persons in California. The California Department of
3 Justice (DOJ) Bureau of Medi-Cal Fraud and Elder Abuse (BMFEA) conducted an investigation
4 into the activities involving Medcare Plus, Excel Plus, and Unicare. The BMFEA investigation
5 revealed that Respondent prepared documentation of her visits (using route sheets and/or nursing
6 notes) with the signature lines intentionally left blank, knowing that another co-conspirator would
7 sign the name of an actual licensed vocational nurse to make it appear that a licensed LVN had
8 made the visit, and that Medcare Plus would seek reimbursement from Medi-Cal for an LVN's
9 visit, rather than for the visit Respondent had actually made. On or about March 24, 2006,
10 Respondent submitted to supervisors her home-nursing route sheets and nursing notes for a visit
11 to a patient with her signature lines intentionally left blank. On or about April 20, 2006,
12 Respondent received payment by Unicare for her alleged visit to the patient even though she was
13 not a licensed vocational nurse. On or about April 19, 2006, Respondent and her co-conspirators
14 caused to be submitted to Medi-Cal a claim for payment for LVN services provided on March 24,
15 2006, in the amount of \$470.56. As a result of the investigation, 44 people employed by
16 Medcare Plus and Excel Plus were arrested in one of the largest Medi-Cal fraud cases in
17 California history. According to the federal indictment, unlicensed and unqualified individuals,
18 many of whom were not U.S. citizens, were sent to private homes to provide nursing services to
19 sick and disabled children across Los Angeles. The agencies would pay the unlicensed
20 individuals \$8 to \$12 an hour but would bill the State of California up to \$35 an hour, per nurse.

21 SECOND CAUSE FOR DISCIPLINE

22 (Unprofessional Conduct)

23 16. Respondent has subjected her license to disciplinary action under sections 810,
24 subdivisions (a)(1) and (a)(2), and 2761, subdivision (a) of the Code in that her actions, as
25 described in paragraph 14, above, constitute unprofessional conduct in that Respondent
26 knowingly prepared and submitted to supervisors her home-nursing route sheets and nursing
27 notes for services she performed as an unlicensed nurse so that her employers could present a
28 claim for payment to a public health insurance agency.

1 **PRAYER**

2 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
3 and that following the hearing, the Board of Registered Nursing issue a decision:

4 1. Revoking or suspending Registered Nurse License Number 693270, issued to Ma
5 Ailaine Francisco Omillo;

6 2. Ordering Ma Ailaine Francisco Omillo to pay the Board of Registered Nursing the
7 reasonable costs of the investigation and enforcement of this case, pursuant to Business and
8 Professions Code section 125.3;

9 3. Taking such other and further action as deemed necessary and proper.

10
11 DATED:

July 28, 2011

Louise R. Bailey

LOUISE R. BAILEY, M.ED., RN
Executive Officer
Board of Registered Nursing
Department of Consumer Affairs
State of California
Complainant

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